

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Rulemaking on the Commission's Own Motion to  
Comply with the Mandates of Senate Bill 1712.

Rulemaking 01-05-046  
(Filed May 24, 2001)

**ADMINISTRATIVE LAW JUDGE'S RULING  
ON ELIGIBILITY TO SEEK INTERVENOR COMPENSATION,  
INCLUDING THE DECLARATION OF SENATOR POLANCO IN THE RECORD,  
AND COX'S MOTION TO FILE COMMENTS UNDER SEAL**

This ruling finds that (1) the organizations represented by Public Advocates, Inc. (Public Advocates)<sup>1</sup> and the Latino Issues Forum/Greenlining (LIF)<sup>2</sup> are eligible to claim intervenor compensation pursuant to Public Utilities Code Section 1801 et seq.,<sup>3</sup> (2) that the Declaration of Senator Polanco and Commissioner Brown's October 31, 2001, responsive letter should be included in correspondence portion of the record, and (3) the motion of Cox California Telcom, LLC, (Cox) to file portions of its opening comments under seal should be granted.

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<sup>1</sup> The three organizations represented by Public Advocates in this proceeding are as follows: (1) National Council of La Raza, (2) Southern Christian Leadership Conference, and (3) California Rural Indian Health Board

<sup>2</sup> Greenlining is a coalition of groups representing the Latino, Asian-American, African-American, low-income, limited-English speakers, and immigrant communities. LIF is a separate public policy institute devoted to advancing innovative solutions for a more equitable and prosperous society for California's large and growing Latino population.

<sup>3</sup> All statutory references are to the Public Utilities Code.

## **I. Notices of Intent to Claim Intervenor Compensation**

### **A. Timeliness**

The intervenor compensation program, set forth in § 1801 et seq., allows eligible public utility customers to receive compensation for the reasonable costs they incur to participate in a Commission proceeding in which they have made a substantial contribution. A customer who intends to seek compensation must file and serve a notice of intent (NOI) to claim compensation within 30 days after the prehearing conference (PHC), or, where no PHC is scheduled, under a procedure determined by the Commission. (§ 1804(a)(1).)

Since there has been no PHC in this proceeding, the assigned Administrative Law Judge (ALJ) issued a ruling that set a deadline of October 29, 2001 for the filing of NOIs.<sup>4</sup>

Public Advocates submitted its NOI on October 29, 2001 with an erratum on November 15, 2001. LIF submitted its NOI on October 16, 2001. Both were timely.

### **B. Customer**

To be eligible to claim intervenor compensation, a participant must be a “customer” as defined by Pub. Util. Code § 1802(b). In Decision (D.) 98-04-059, the Commission instructed participants to demonstrate how they meet the statutory definition of customer:

“When filing its Notice of Intent, a participant should state how it meets the definition of customer: as a participant representing consumers, as a representative authorized by a customer, or as a representative of a group or organization that is authorized by its bylaws or articles of incorporation to represent the interests of residential customers. A group or

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<sup>4</sup> The assigned ALJ’s ruling was issued on October 1, 2001.

organization should provide a copy of its articles or bylaws, noting where in the document it is authorized to represent the interest of residential ratepayers. (D.98-04-059, Conclusion of Law 5.)

“Groups should indicate in the Notice of Intent the percentage of their membership that are residential ratepayers. Similarly, a 'representative authorized by a customer' should identify in his Notice of Intent the residential customer or customers that authorized him to represent that customer.” (*Id.*, Finding of Fact 12.)

### Public Advocates

Public Advocates included the following in its NOI: (1) a statement that each organization represented by Public Advocates is authorized by its articles of incorporation and/or bylaws to represent the interests of residential ratepayers; (2) a copy of each organization’s articles of incorporation and bylaws; and (3) a written declaration by an officer of each organization stating the percentage of the organization’s membership that is residential ratepayers. Public Advocates also included citations to previous Commission decisions and rulings finding each organization eligible to seek compensation.

### LIF

LIF stated that both Greenlining’s and Latino Issues Forum’s members and constituents are residential telephone service customers, thus qualifying each organization as a “customer.” Both are also authorized by their respective by-laws to represent residential customers before this Commission. Copies of the by-laws have been previously submitted to the Commission. LIF also included citations to previous rulings and decisions finding that both organizations meet the definition of customer, as well as an estimate of the percentage of their respective members who are residential customers.

Consistent with previous Commission decisions and rulings, the three groups represented by Public Advocates meet the definition of customer, as do The Greenlining Institute and the Latino Issues Forum.

### **C. Nature and Extent of Planned Participation**

The NOI must describe the nature and extent of the customer's planned participation. (§ 1804(a)(2)(A)(i).) LIF states that it has filed opening and reply comments; and, if evidentiary hearings are held, it will file testimony, present expert witnesses, conduct discovery as appropriate, participate fully in hearings including cross examination, prepare briefs, and file comments. Public Advocates offers a similar description of its planned participation. LIF and Public Advocates have complied with the requirement in § 1804(a)(2)(A)(i) to describe their planned participation.

### **D. Estimate of Compensation**

The NOI must include an itemized estimate of the compensation that the customer expects to request. (§ 1804(a)(2)(A)(ii)) To meet this requirement, Public Advocates estimated its total compensation request to be \$59,825.00, with specific estimates for attorneys' fees, expenses, and experts' fees. LIF presented a similar estimate with a total of \$95,425.00, also consisting of specific amounts for attorneys' fees, expenses, and experts' fees.

The organizations have complied with the requirement in §1804(a)(2)(A)(ii) to provide an itemized estimate of the compensation each expects to request.

Neither LIF nor Public Advocates itemized its estimated compensation by subject matter. Both organizations are reminded that in any request for compensation, the requesting organization will have to demonstrate that it seeks compensation only for costs demonstrably related to the scope of this proceeding.

### **E. Significant Financial Hardship**

To be eligible to claim compensation, a participant must demonstrate “significant financial hardship” as defined by § 1802(g). To make this demonstration, an organization that is authorized by its articles or bylaws to represent customers must show that the economic interests of the individual members of the organization is small in comparison to the costs of participation. (D.98-04-059, mimeo., pp. 34, 35, and 37.)

To comply with the requirements set forth in § 1802(g) and D.98-04-059, Public Advocates included in its NOI a declaration from an officer of each organization represented by Public Advocates. Each officer stated in his or her declaration that the organization’s members are mostly low-income residential customers, and because of this, the economic interests of the organization’s individual members is small compared with the costs of participation in this proceeding. As a result of these declarations, Public Advocates has met its burden to demonstrate “significant financial hardship.”

LIF deferred its showing of significant financial hardship until it files its request for compensation.

### **F. Conclusion**

The organizations represented by Public Advocates and LIF are eligible to file a request for compensation in this proceeding.

## **II. Motion to Accept for Filing Declaration of Senator Polanco**

On October 4, 2001, Public Advocates filed a motion seeking leave to file the declaration of Senator Polanco.<sup>5</sup> Public Advocates contended that it was

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<sup>5</sup> The declaration was attached to the motion.

essential for the Commission to consider Senator Polanco's declaration because it demonstrated the Legislature's intent behind Senate Bill 1712.

On October 19, 2001, Cox California Telcom, LLC (Cox) filed its opposition to the motion. Cox stated that California law holds that post-enactment statements of a single legislator are not admissible to prove legislative intent.

With my permission, Public Advocates filed a reply to Cox's opposition. The reply stated that the declaration was not simply the statement of one legislator but rather reflected the legislature's intention as a whole, and thus was acceptable evidence of legislative intent.

On October 31, 2001, Commissioner Brown, the assigned Commissioner for this proceeding, responded by letter to Senator Polanco regarding the substantive assertions in the declaration. A copy of the letter is attached to this ruling.

Rule 1.2 of the Commission's Rules of Practice and Procedure requires that the Commission render its decision based on evidence in the record. Public Advocates submitted the Declaration of Senator Polanco after opening and reply comments by the other parties had been filed. Consequently, the other parties had no opportunity to comment on the assertions in the declaration. Commissioner Brown, however, has addressed the assertions made in the Polanco declaration in a letter to Senator Polanco. The declaration and Commissioner Brown's letter are related to the record in this proceeding but have not been subject to comment from other parties. In recognition of the absence of comment, both documents will be included in the formal file but in the correspondence section. In this way, the Commission will have the benefit of the information contained in the two documents, but the placement in the file will distinguish these documents from the properly filed comments.

### **III. Motion of Cox for Leave to File Confidential and Proprietary Portions of Its Opening Comments Under Seal**

On August 3, 2001, Cox filed a motion seeking to file portions of its opening comments under seal. Cox stated that the comments contained proprietary information of its corporate affiliate on cable and high-speed internet services, and that such services are highly competitive and beyond the Commission's jurisdiction. Cox provided the information to assist the Commission in its consideration of the issues in this proceeding.

No party opposed Cox's motion. It will be granted as set out below.

Therefore, **IT IS RULED** that:

1. The organizations represented by Public Advocates and LIF are eligible to file a request for compensation in this proceeding.
2. The declaration of Senator Polanco and the October 31, 2001, letter from Commissioner Brown to Senator Polanco shall be accepted for filing in the correspondence portion of the record of this proceeding.
3. Good cause appearing, Cox's motion for a protective order is granted. The portions of Cox's opening comments filed under seal as an attachment to the motion for protective order shall remain under seal for a period of two years from the date of this ruling, and during that period shall not be made accessible or disclosed to anyone other than Commission staff except on the further order or ruling of the Commission, the Assigned commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge. If Cox believes that further protection of this information is needed after two years, it may file a motion stating the justification for further withholding the material from public inspection, or for such other relief as the Commission rules may then provide. This motion shall be filed no later than 30 days before the expiration of this protective order.

Dated January 8, 2002, at San Francisco, California.

/s/ MARIBETH ANN BUSHEY

Maribeth Ann Bushey  
Administrative Law Judge



**(See CPUC Formal Files for the Attachment.)**

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling on Eligibility to Seek Intervenor Compensation, Including the Declaration of Senator Polanco in the Record, and Cox's Motion to File Comments Under Seal on all parties of record in this proceeding or their attorneys of record.

Dated January 8, 2002, at San Francisco, California.

/s/ KE HUANG

Ke Huang

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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